

ADMINISTRATIVE PROCEDURES GUIDE



Revised: June 2011

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ADMINISTRATIVE PROCEDURES

The U.S. District Court for the Western District of New York requires attorneys in civil and criminal cases to file documents with the Court electronically over the Internet using its Case Management/Electronic Case Filing (CM/ECF) system.

The Court requires attorneys to file documents electronically, absent a showing of good cause, unless otherwise excused by the procedures set forth below or by Order of the Court.

Typically only registered attorneys, as Officers of the Court, will be permitted to file documents electronically. A Judicial Officer may, at his or her discretion, grant a pro se litigant who demonstrates a willingness and capability to file documents electronically, permission to register to do so. Permission to electronically file documents may be revoked at any time.

1. REGISTRATION FOR THE ELECTRONIC CASE FILING SYSTEM

a. Designation of Cases

Beginning January 1, 2004, all civil and criminal cases currently pending and newly filed, except as expressly noted herein, shall be assigned to the Electronic Case Filing System ("System"). Except as expressly provided and in exceptional circumstances preventing a Filing User from filing electronically, all petitions, motions, memoranda of law, or other pleadings and documents required to be filed with the Court in connection with a case assigned to the System must be electronically filed.

b. Username and Password

Attorneys admitted to practice in this Court and currently in good standing, including those admitted pro hac vice and attorneys authorized to represent the United States, must register as Filing Users of the Court's Electronic Filing System.

Pro Se litigants who have been granted permission to file documents electronically must register as a Filing User of the Court's Electronic Filing System.

c. Registration

- i. Registration is in a form prescribed by the clerk and requires the Filing User's name, address, telephone number, and Internet e-mail address. Attorneys must include a declaration that they are admitted to the bar of this court. A completed registration form, in the form attached, must be submitted to the Court by each attorney registering for a password or pro se litigant who has been granted permission to electronically file documents. The registration forms are also available on our web site at: www.nywd.uscourts.gov . Registration as a Filing User constitutes consent to electronic service of all documents provided herein in accordance with the Federal Rules of Civil Procedure.
- ii. All registration forms must be mailed or delivered to the Office of the Clerk, U.S. District Court, 68 Court Street, Buffalo, NY 14202.
- iii. The registering attorney or pro se litigant's username and password will be mailed in an envelope marked "Confidential," unless the Clerk's Office is notified, in writing, at the time of registration that they wish an alternative delivery method. The username and password combination serves as a signature for purposes of Fed.R.Civ.P. 11, the Federal Rules of Civil Procedure, the Local Rules of this Court and any other purposes for which a signature is required in connection with proceedings before the Court. The login and password issued to an individual may be used only to file documents on behalf of that attorney or pro se litigant.
- iv. A registered attorney may share his or her username and password with an authorized employee or agent of that attorney's law office or organization for purposes of filing. This does not in any way alter the fact that the attorney's username and password combination constitute that attorney's official signature on electronically filed documents.
- v. Registered users will be able to change their own passwords. In the event that they believe the security of an existing password has been compromised and that a threat to the System exists, they should change their password immediately. In addition, they should give immediate notice by telephonic means to the Clerk of Court, Chief Deputy Clerk or Systems Manager and confirm by facsimile (716-551-4850) in order to prevent access to the System by use of the old password.

Users may be subject to sanctions for failure to comply with this provision.

- vi. A registered user whose e-mail address, mailing address, telephone number or fax number has changed from that of the original registration form shall timely E-file a notice of a change of address in each of their pending cases, and serve a copy of the notice on all other parties. Registered users are responsible for updating this information in their user accounts in the System.
- vii. The Court reserves the right to revoke or otherwise restrict a registered user's access to the System at any time should the Court have reasonable cause to believe that the user has misused the System. Electronic and written notice of any such revocation or restriction shall be provided to the user.
- viii. Once registered, an attorney may withdraw from participation in the Electronic Filing System only by permission of the Chief Judge of the District for good cause shown. The registered attorney seeking to withdraw must submit a written request to the Chief Judge explaining the reason(s) or justification(s) for withdrawal. Once registered, an approved pro se litigant may withdraw from participation in the Electronic Filing System by submitting a written request to the Judicial Officer who granted permission to participate in electronic filing of documents. Upon approval of a request from either a registered attorney or pro se litigant, the Clerk of Court shall delete the Filing User's username and password from the System, and notify the Filing User of same. It is the Filing User's responsibility to notify opposing counsel in all pending cases that the Filing User has been granted permission to withdraw from the Electronic Filing System and that all future service of documents must therefore be made by conventional means.

2. ELECTRONIC FILING AND SERVICE OF DOCUMENTS

a. Filing

- i. All documents, except sealed papers and as expressly provided for in these guidelines, shall be electronically filed on the system. Electronic transmission of a document to the System consistent with these procedures, whether accomplished by the Filing User or a Court User, together with the transmission of a Notice of Electronic Filing from the Court, constitutes filing of a document for all purposes of the Federal Rules of Civil and Criminal Procedure

and the Local Rules of this Court, and constitutes entry of the document on the docket kept by the Clerk under Fed.R.Civ.P. 58 and 79 and Fed.R.Crim.P. 49 and 55. A document shall not be considered filed for purposes of the Federal Rules of Civil and Criminal Procedure until the filing party receives a System generated Notice of Electronic Filing.

(1) E-mailing a document to the Clerk's Office or to the assigned judge shall not constitute "filing" of such document.

- ii. If the document to be filed requires leave of court, such as an amended complaint or a document to be filed out of time, the proposed document shall be attached as an exhibit to the motion (please refer to Local Rules on submitting red-lined versions of amended pleadings). If the motion is granted, the attorney must file the document electronically with the Court as a separate document.
- iii. Courtesy copies of certain documents may be required. Filers should refer to the "Who Wants Paper" matrix published on the Court's website at www.nywd.uscourts.gov.
- iv. Before filing a scanned document with the court, a Filing User must verify its legibility.
- v. A document created with a word processor, or a paper document, must be converted to Portable Document Format to be electronically filed with the court. Documents which exist **only** in paper form may be scanned into a portable document format (PDF) for electronic filing. Electronic documents must be converted to .PDF from a word processing program and must be **text searchable**. Do not print, scan and .PDF your document when it has been created in a word processing program.

b. Official Court Record

- i. The Clerk's Office will not maintain a paper court file in any case begun on or after January 1, 2004, except as otherwise provided herein. The official court record shall be the electronic file as stored by the court, and any conventional documents or exhibits filed in accordance with these procedures.
- ii. Original documents must be retained by the filing party and made available, upon request, to the Court and other parties for a period of five years following the expiration of all time periods for appeals.

- c. Complaints, Petitions, Summons and Charging Instruments
 - i. Beginning June 13, 2011, registered attorneys may open most civil complaints, notice of removal and petitions for habeas corpus on line. Filing fees for civil cases opened on line will be made using a credit card during the opening process. If a registered attorney does not open a civil case on line, complaints and petitions shall be filed, fees paid and summonses issued and served in the traditional manner rather than electronically. Charging instruments in criminal cases shall be filed in the traditional manner rather than electronically. In addition, when a case is opened in the traditional manner, registered attorneys shall provide the initiating document, in electronic format on a disk or CD, in PDF format, with signatures in accordance with Section 2.g below.
 - ii. When opening a civil case on line, the civil cover sheet, summons (if applicable) and marshal forms (if applicable) must be attached to the initiating document as individual attachments.
 - iii. Summons will be issued electronically and returned to the registered attorney through an entry in the System.
- d. Attachments and Exhibits
 - i. Attachments and exhibits larger than five megabytes shall be filed electronically in separate five megabyte segments.
 - ii. Filing Users must submit in electronic form all documents referenced as exhibits or attachments, except as otherwise provided herein. A Filing User must submit as exhibits or attachments only those excerpts of the referenced documents that are directly germane to the matter under consideration by the court. Excerpted material must be clearly and prominently identified as such. Filing Users who file excerpts of documents as exhibits or attachments under this rule do so without prejudice to their right to timely file additional excerpts or the complete document. Responding parties may timely file additional excerpts or the complete document that they believe are directly germane. The Court may require parties to file additional excerpts or the complete document. A Filing User must request leave of the Court to file a document exhibit or attachment in non-electronic form.
 - iii. Exhibits offered or admitted at trial will not be filed electronically or conventionally unless so ordered by the Court.

- iii. Exhibits such as videotapes and tape recordings shall be filed in the conventional manner with the Clerk of Court, and a Notice of Manual Filing shall be electronically filed by the party. Manually filed exhibits must have the case number and case name securely fastened or marked on the item.
- e. Timely Filing of Documents
 - i. A document will be deemed timely filed if filed prior to midnight Eastern Time, unless otherwise ordered by the Court. A document will be considered untimely if filed thereafter. When a Court order requires that a document be filed on a weekend or holiday, the document may be filed by close of business the next business day without further application to the Court.
 - ii. A document filed electronically is deemed filed on the date and time stated on the Notice of Electronic Filing.
- f. Service of Documents by Electronic Means
 - i. Registered Users consent to the electronic service of all documents, and must make available an electronic mail address for service during the registration process. Upon the filing of a document by a party, a Notice of Electronic Filing, with a hyperlink to the filed document, will be automatically generated by the electronic filing system and sent via electronic mail to the e-mail addresses of all parties participating in the electronic filing system in the case. Electronic service of the Notice of Electronic Filing constitutes service of the filed document for all purposes of the Federal Rules of Civil Procedure, Federal Rules of Criminal Procedure and the Local Rules of this Court.
 - ii. The hyperlink to filed documents contained in the Notice of Electronic Filing must be opened within 15 days from the date the document was filed to provide registered users access to the document. The hyperlink expires after 15 days and users will be unable to access documents for free after that time. Filing Users are encouraged to check their e-mail frequently for notice of filed documents.
 - iii. Attorneys granted an exemption from filing documents in the System and pro se litigants who have not been granted permission to electronically file documents are entitled to a paper copy of any electronically filed pleading, document or order. The filing party

must therefore provide the non-registered party with the pleading, document or order according to the Federal Rules of Civil and Criminal Procedures. When mailing paper copies of documents that have been electronically filed, the filing party may include the “Notice of Electronic Filing” to provide the recipient with proof of filing.

- iv. A certificate of service on all parties entitled to service or notice is still required when a party files a document electronically. The certificate must state the manner in which service or notice was accomplished on each party so entitled. A certificate of service should be filed as an attachment to the document. A sample certificate of service is attached to these guidelines and is also available on the Court’s website at: www.nywd.uscourts.gov.
- v. E-mailing or faxing a pleading or document to any party shall **not** constitute service of the pleading or document.

g. Signatures

- i. Non-Attorney Signature Generally. If the original document requires the signature of a non-attorney, the filing party shall obtain the signature of the non-attorney on the document.
 - (1) The filing party or attorney then shall file the document electronically indicating the signatory’s name in the form “**s/(name).**”
 - (2) A non-filing signatory or party who disputes the authenticity of an electronically filed document or the authenticity of the signature on that document must file an objection to the document within ten days of receiving the Notice of Electronic Filing.
- ii. Defendant Signatures in Criminal Cases. A document containing the signature of a defendant in a criminal case will be filed in a scanned format that contains an image of the defendant’s signature.
- iii. Registered User Signature. The username and password required to file documents on the Electronic Filing System serve as the Filing User’s signature on all electronic documents filed with this Court. The also serve as a signature for the purposes of Fed.R.Civ.P. 11, the Federal Rules of Civil Procedure, the Local

Rules of this Court, and any other purpose for which a signature is required in connection with proceedings before this Court. A pleading requiring a Registered User's signature must include a signature block in the following format:

s/attorney's typed name	s/registered pro se litigant's name
Attorney for [plaintiff/defendant]	Address
Firm Name	Telephone Number
Address	Email Address
Telephone Number	
Email Address	

For certificates of service, affidavits, affirmations and declarations **only**, the signature block may be in the following format:

s/registered user's typed name

- (1) Any party challenging the authenticity of an electronically filed document or the attorney's signature on that document must file an objection to the document within ten days of receiving the Notice of Electronic Filing.

iv. Multiple Signatures. The following procedure applies when a stipulation or other document requires two or more signatures:

- (1) The filing party shall initially confirm that the document is acceptable to all persons required to sign the document and shall obtain the signatures of all parties on the document.
- (2) The filing party or attorney then shall file the document electronically indicating the signatories, e.g., **s/Jane Doe,"s/John Smith," etc.**
- (3) A non-filing signatory or party who disputes the authenticity of an electronically filed document containing multiple signatures or the authenticity of the signatures themselves must file an objection to the document within ten days of receiving the Notice of Electronic Filing.

v. Originals of all documents containing signatures must be retained by the filing party and made available, upon request, to the Court and other parties for a period of five years following the expiration of all time periods for appeals.

h. Fees Payable to the Clerk

- i. Any fee required for filing of a pleading or paper in District Court is payable to the Clerk of Court by check or money order. In addition, when opening a civil case on line, filing a notice of appeal on line or applying to appear pro hac vice on line, the fees should be paid on line by registered users through pay.gov. Users will be directed to pay.gov while entering their transaction and should have a credit card available. When opening a civil case and applying to proceed in forma pauperis or when the United States of America opens a case, the payment screen can be bypassed to complete the transaction. Additional information on making electronic payments can be located on our website at: www.nywd.uscourts.gov

i. Orders and Judgments

- i. All signed orders and judgments, except those under seal, will be electronically filed by the Court. Any electronically signed order or judgment has the same force and effect as a conventional order or judgment.
- ii. The assigned judge, if appropriate, may issue routine orders by a text-only entry upon the docket. In such cases, no PDF document will issue; the text-only entry shall constitute the Court's only order on the matter.
- iii. Immediately upon the entry of an order or judgment in an action assigned to the Electronic Filing System, the clerk will transmit to the Filing Users in the case, in electronic form, a Notice of Electronic Filing. Electronic transmission of the Notice of Electronic Filing constitutes the notice required by Fed.R.Civ.P. 77(d) and Fed.R.Crim.P. 49(c). The clerk must give notice in paper form to a person who has not consented to electronic service in accordance with the Federal Rules of Civil Procedure.

j. Proposed Orders

- i. Proposed orders should be attached to an Internet e-mail sent to the e-mail address of the assigned judge. The e-mail addresses are as follows:

Chief Judge Skretny	-	skretny@nywd.uscourts.gov
Judge Arcara	-	arcara@nywd.uscourts.gov
Judge Larimer	-	larimer@nywd.uscourts.gov

Judge Siragusa	-	siragusa@nywd.uscourts.gov
Judge Curtin	-	curtin@nywd.uscourts.gov
Judge Telesca	-	telesca@nywd.uscourts.gov
Judge Scott	-	sctoo@nywd.uscourts.gov
Judge Feldman	-	feldman@nywd.uscourts.gov
Judge Schroeder	-	schroeder@nywd.uscourts.gov
Judge Payson	-	payson@nywd.uscourts.gov
Judge McCarthy	-	mccarthy@nywd.uscourts.gov
Judge Foschio	-	foschio@nywd.uscourts.gov

No other documents, pleadings or electronic communications may be sent to the above e-mail addresses.

- ii. All proposed orders must be submitted in a format compatible with WordPerfect, which is a “Save As” option in most word processing software. Judges will not accept proposed orders in PDF format.

k. Title of Docket Entries

- i. The party electronically filing a pleading or document shall be responsible for designating a docket entry title for the document by using one of the docket events prescribed by the Court.

l. Correcting Docket Entries

- i. Once a document is submitted and accepted, it becomes part of the case docket. The System will not permit non-court electronic filers to make changes to the document(s) or docket entry.
- ii. A document incorrectly filed in a case may be the result of posting the wrong PDF file to a docket entry, selecting the wrong document type from the menu, entering the incorrect case number or not catching the error before the transaction is completed. **The filing party should not attempt to re-file the document.**
- iii. As soon as possible after an error is discovered, the filing party should telephone the Clerks Office (Buffalo: 716-551-4211 or Rochester: 585-613-4000) with the case number and document number for which the correction is being requested. If appropriate, the Court will make an entry indicating that the document was filed in error. The Filing User will be advised if the document needs to be re-filed. In such cases, the Court will make a determination on the timeliness of the re-filed document. The Clerks Office will never delete an entire entry from a docket. When entries are

corrected, the Clerks Office will enter a remark on the docket in the form of an e-filing notification which will summarize the correction. It will also advise if further action is required by the Filing User.

m. Privacy

- i. In all filings, parties shall comply with Federal Rule of Civil Procedure 5.2 or Federal Rule of Criminal Procedure 49.1.

n. Conventional Filing of Certain Types of Cases

- i. Miscellaneous Civil and Miscellaneous Criminal cases should be filed conventionally by Registered Users. If such cases are sealed, they will not be available electronically, except to court users, until such time as they are unsealed by order of the Court.

o. Conventional Filing of Documents

- i. The following procedures govern documents filed conventionally. The Court, upon application, may also authorize conventional filing of other documents otherwise subject to these procedures.

- (1) Documents filed Under Seal. Unredacted documents filed with the Court pursuant to the privacy provisions of Federal Rule of Civil Procedure 5.2 or Federal Rule of Criminal Procedure 49.1 shall be submitted in a sealing envelope with the following on the envelope.

Case name and number
Unredacted version of document #__ e-filed
on <date>
FILE UNDER SEAL

- (2) Except as authorized by statute or federal rule, no document shall be filed under seal without approval by the Court. A party seeking to file a document under seal shall deliver a paper copy of the following documents directly to the chambers of the assigned judge, **without** electronically filing the same:

- (a) a copy of the document to be sealed;
- (b) a supporting affidavit setting forth the reasons as to why the document should be placed under seal and,

if appropriate, a memorandum of law (“supporting materials”);

- (c) an envelope (“sealing envelope”) large enough to accommodate the proposed sealed document to which is affixed a label bearing the case name, case number and the words “Sealed per Order of Judge _____;” and
- (d) a proposed order granting the motion to seal.

In addition, the Registered User shall electronically file a notice of motion which shall identify the nature of the documents to be sealed, but need not state the reasons why sealing is necessary. Motions by the government to file a warrant under seal are excluded from this requirement. In all other cases, a party seeking to be relieved of this requirement or seeking to file an ex parte motion to seal shall contact the chambers of the assigned judge for instructions.

If the motion to seal is granted, the assigned judge will sign the sealing envelope and electronically file an order authorizing the filing of the document under seal. The document will be maintained in the Clerks Office and will not be available to be viewed electronically by anyone other than court users. The assigned judge, in his or her discretion, may also direct that the supporting materials be filed under seal.

If the motion to seal is denied, the assigned judge shall enter an order denying the motion and return the documents and supporting materials to the moving party.

- (3) Magistrate Judge Consents. Pursuant to Fed.R.Civ.P. 73(b), parties’ filing consents to jurisdiction by United States Magistrate Judge will continue to be treated as non-public documents until all parties have consented. Therefore, parties must **submit and not** electronically file their consent forms in paper (either mailed or delivered to the Clerks Office) so that the consent is not a public document. If all parties consent to the jurisdiction of a Magistrate Judge, the Clerk will scan all consent forms which will then become a public document.

- (4) Pro Se Filers. Pro Se filers shall file paper originals of all initiating documents, pleadings, motions, affidavits, briefs and other documents which must be signed or which require either verification or an unsworn declaration under any rule or statute. The Clerk's Office will scan these original documents into an electronic file in the System. If a Pro Se filer is granted permission to register to electronically file documents, they shall comply with the guidelines contained in this document.
- (5) Habeas Corpus Cases. The administrative record in habeas corpus cases will be conventionally filed and served since scanning that set of documents and filing or retrieving them electronically is impractical at this time. Because the administrative record will not be scanned or otherwise placed on the System, the Clerk's Office will docket a text only event stating that the record is available in paper form at the Clerk's Office.
- (6) Social Security Cases. Absent a showing of good cause, and except as provided in Section o(i)(4) above, all documents, notices and orders in social security reviews will be filed and noticed electronically, except as noted below.
 - (a) The administrative record in Social Security cases will be conventionally filed and served since scanning that set of documents and filing or retrieving them electronically is impractical at this time. Because the administrative record will not be scanned or otherwise placed on the System, the Clerk's Office will docket a text-only event stating that the transcript is available in paper form in the Clerk's Office.
 - (b) All other documents in the case, including briefs, will be filed and served electronically unless the Court otherwise orders.
 - (c) Access to electronic records in Social Security cases is governed by Federal Rule of Civil Procedure 5.2.

p. Stipulations

- i. Pursuant to Local Rule of Civil Procedure 29 and Local Rule of Criminal Procedure 49.3, all stipulations shall be filed electronically.

- q. Filing Letters Electronically
 - i. The electronic filing of letters is generally prohibited unless granted permission by an assigned judge. Letters to the Court must be submitted conventionally.
- r. Bounce Back E-mails
 - i. If the Clerks Office receives a “bounce back” (i.e., an undeliverable e-mail) notice from a Registered User’s primary e-mail account, the user will be contacted by the Clerk’s Office and given one opportunity to update their account in CM/ECF with the current information. With the second bounce back, the Court may issue a show cause order regarding the suspension of the Registered User’s filing privilege.
 - ii. Any bounce back notice generated by a secondary e-mail address will not be reserved. The only action taken on this kind of bounce back notice is that it will be deleted from the Clerk’s Office e-mail box. It is the Registered User’s responsibility to maintain and update all e-mail addresses, primary and secondary, associated with their account.
- s. Government Attorneys
 - i. Upon request, CM/ECF logins/passwords are issued to attorneys employed by the government. Upon transfer to different government agencies, users must fax (716-551-4850) notification to the Clerk and include updated US mail and e-mail addresses in order for their logins/passwords to remain valid.
 - ii. Government users who leave government agencies and do not transfer to other government agencies must fax notification to the Clerk so that their logins/passwords may be deactivated.
 - iii. Government users associated with government agencies who leave government practice must already be or become members of the Bar of the Western District of New York in order to register for CM/ECF logins/passwords. Information on becoming a member of the Western District of New York can be obtained on our web site at: www.nywd.uscourts.gov
 - iv. Government agencies must also notify the Clerk when users leave their agencies. A notice of substitution of counsel must be filed in

order for a government agency to receive future CM/ECF notices regarding case activity associated with a user who is no longer with their agency.

t. System Availability

- i. Although parties can file documents electronically 24 hours a day, registered users are strongly encouraged to file all documents during normal working hours of the Clerk's Office (8:30 a.m. to 5:00 p.m. Eastern Time).

u. Technical Failures

- i. A Filing User whose filing is made untimely as a result of a technical failure may see appropriate relief from the Court.

3. PUBLIC ACCESS TO THE SYSTEM

a. Public Access at the Court.

- i. A person may review at the Clerk's Office filings that have not been sealed by the Court. Only a Registered User may file documents electronically. Electronic access to the electronic docket and documents filed in the System is available to the public at no charge at the Clerk's Office during regular business hours. A copy fee for an electronic reproduction is required in accordance with 28 U.S.C. Section 1914.

b. Internet Access

- i. Remote electronic access to the System for viewing purposes is limited to subscribers to the Public Access to Court Electronic Records ("PACER") System. The Judicial Conference of the United States has ruled that a user fee will be charged for remotely accessing certain detailed case information, such as filed documents and docket sheets in civil cases, but excluding review of calendars and similar general information. Parties' initial access to a document filed electronically is free of charge. Parties are encouraged to download or print the filed document when it is initially accessed via the Notice of Electronic Filing generated by the System.

- c. Conventional Copies and Certified Copies
 - i. Conventional copies and certified copies of electronically filed documents may be purchased at the Clerk's Office. The fee for copying and certifying will be in accordance with 28 U.S.C. Section 1914.

(SAMPLE)

United States District Court
Western District of New York

Case No.

Certificate of Service

I hereby certify that on _____, I
electronically filed the foregoing with the Clerk of the District Court using its CM/ECF
system, which would then electronically notify the following CM/ECF participants on
this case:

- 1.
- 2.

And, I hereby certify that I have mailed the foregoing, by the United States
Postal Service, to the following non-CM/ECF participants:

- 1.
- 2.

s/typed name

